

ASSEMBLY, No. 4440

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED NOVEMBER 18, 2013

Sponsored by:

Assemblywoman ALISON LITTELL MCHOSE
District 24 (Morris, Sussex and Warren)

SYNOPSIS

Provides for licensing of abortion facilities and establishes criminal and civil penalties for violations, and designated as the "Women's Health Protection Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning regulation of facilities that perform abortions,
2 supplementing Title 26 of the Revised Statutes, and designated
3 as the "Women's Health Protection Act."
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

9 "Abortion" means the use of any means to terminate the
10 pregnancy of a female known to be pregnant with knowledge that
11 the termination with those means will, with reasonable likelihood,
12 cause the death of the fetus.

13 "Abortion facility" means an abortion practice or licensed
14 ambulatory care facility.

15 "Abortion practice" means a setting, other than in a hospital or
16 licensed ambulatory care facility, in which a licensed physician
17 performs five or more first trimester abortions in any month in
18 accordance with regulations adopted by the State Board of Medical
19 Examiners.

20 "Commissioner" means the Commissioner of Health.

21 "Department" means the Department of Health.

22 "Gestation" means the time that has elapsed since the first day of
23 a woman's last menstrual period.

24 "Health care professional" means a health care professional who
25 is licensed or otherwise authorized to practice a health care
26 profession pursuant to Title 45 of the Revised Statutes and is
27 currently engaged in that practice.

28 "License" means a license issued by the department pursuant to
29 this act.

30 "Licensed abortion facility" means an abortion facility licensed
31 pursuant to this act.

32 "Licensee" means the holder of the license.

33 "Licensed ambulatory care facility" means a facility licensed
34 pursuant to P.L.1971, c.126 (C.26:2H-1 et seq.), other than a
35 hospital, in which five or more first trimester abortions are
36 performed in any month, or in which any abortions in the second or
37 third trimester are performed.

38 "Physician" means a person who is licensed to practice medicine
39 and surgery pursuant to chapter 9 of Title 45 of the Revised
40 Statutes.
41

42 2. a. An abortion practice, which performed abortions prior to
43 the effective date of this act, shall apply to the department for a
44 license as a licensed abortion facility within 90 days of the effective
45 date of this act.

46 b. A licensed ambulatory care facility, which performed
47 abortions prior to the effective date of this act, shall comply with

1 the provisions of this act within 90 days of the effective date of this
2 act.

3 c. Beginning six months after the effective date of this act:

4 (1) the department shall issue a license as a licensed abortion
5 facility to an abortion practice or licensed ambulatory care facility
6 which complies with the provisions of this act; and

7 (2) in the case of a licensed ambulatory care facility that
8 performed abortions prior to the effective date of this act, the
9 department shall, at the time of renewal, issue the licensed
10 ambulatory care facility a license as a licensed abortion facility if
11 the licensed ambulatory care facility complies with the provisions
12 of this act.

13 d. A person who operates an abortion facility in violation of this
14 section shall be guilty of a crime of the third degree.

15 e. A person who purposely, knowingly, or recklessly violates the
16 provisions of this act, or any rules and regulations adopted pursuant
17 thereto, shall be guilty of a crime of the third degree.

18 f. A licensed abortion facility that violates the provisions of this
19 act may be liable to a civil penalty of \$500 for the first offense,
20 \$1,000 for the second offense, and \$2,000 for the third and each
21 subsequent offense, to be sued for and collected in a summary
22 proceeding by the commissioner pursuant to the "Penalty
23 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
24 Each day of violation shall constitute a separate violation for
25 purposes of assessing the penalty. The commissioner shall
26 consider, in determining whether to pursue a civil penalty pursuant
27 to this subsection, the following:

28 (1) the gravity of the violation, including the probability that
29 death or serious physical harm may or has resulted as a
30 consequence of the violation;

31 (2) the size of the population at risk as a consequence of the
32 violation;

33 (3) the extent to which this act or rules and regulations adopted
34 pursuant thereto were violated;

35 (4) an indication that the licensed abortion facility acted in good
36 faith;

37 (5) the duration, frequency, and relevance of any previous
38 violation; and

39 (6) the financial benefit to the licensed abortion facility of
40 continuing or having committed the violation.

41 g. The Attorney General may, in a civil action, obtain
42 appropriate prospective injunctive relief to enjoin a violation of this
43 act.

44

45 3. a. The department shall prescribe the form and manner for
46 applying to the department for a license as a licensed abortion
47 facility, which shall provide for submission of information the

1 department deems necessary for complying with the provisions of
2 this act and the rules and regulations adopted pursuant thereto.

3 b. The department may issue a provisional license for a six-
4 month period in a case in which compliance with minimum
5 standards, rules, and regulations require an extension of time, unless
6 another State or local agency authorized to perform inspections has
7 otherwise disapproved the applicant or the applicant's
8 noncompliance would be detrimental to the health and safety of the
9 public.

10 c. A license issued pursuant to this act shall apply to the location
11 and licensee stated on the application, and shall not be transferable
12 from one location to another location or from one licensed abortion
13 facility to another licensed abortion facility.

14 d. If a licensed abortion facility changes location, the
15 department shall revoke its license and require a new application to
16 be filed with the department prior to renewal of a license.

17 e. A full license shall be valid for one year from the date of
18 issuance, be on a form prescribed by the department, and may be
19 renewed yearly upon application and payment of a renewal fee.

20 f. The department shall set by regulation the fee for an initial
21 license and license renewal.

22 g. The department may deny, suspend, revoke, or refuse to
23 renew a license in any case in which the department finds that there
24 has been a substantial failure of the applicant or licensed abortion
25 facility to comply with the requirements of this act or the rules and
26 regulations adopted pursuant thereto. The department shall furnish
27 the person, applicant, or licensee with a 30 days' notice specifying
28 the reason for denial, suspension, revocation, or refusal to renew a
29 license.

30 h. A person, applicant, or licensee who feels aggrieved by the
31 action of the department in denying, suspending, revoking, or
32 refusing to renew a license may appeal the action in accordance
33 with the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.).

35
36 4. Prior to the issuance or renewal of a license pursuant to this
37 act, the department shall conduct an on-site inspection to ensure
38 compliance with the provisions of this act and the rules and
39 regulations adopted pursuant thereto. The department shall
40 establish rules and regulations for conducting pre-licensure and re-
41 licensure inspections, which shall include procedures for:

42 a. conducting an inspection and investigation as a result of a
43 complaint received by the department that is made against a
44 licensed abortion facility for non-compliance with the provisions of
45 this act and the rules and regulations adopted pursuant thereto; and

46 b. recording, responding to, and disposing of, complaints
47 received concerning a licensed abortion facility.

1 5. a. The commissioner shall adopt rules and regulations that, at
2 a minimum, require a licensed abortion facility to have physical
3 facilities that provide:

4 (1) adequate private space specifically designated for
5 interviewing, counseling, and medically evaluating a patient;

6 (2) a dressing room for patients and health care professionals;

7 (3) appropriate lavatory areas for handwashing prior to
8 performing an abortion;

9 (4) a private procedure room for performing an abortion that
10 provides adequate lighting and ventilation;

11 (5) surgical or gynecological examination tables and other fixed
12 equipment necessary to facilitate performance of an abortion;

13 (6) a dedicated recovery area sufficiently equipped to provide for
14 a patient to be supervised, monitored, and observed until discharge;

15 (7) emergency exits that accommodate a stretcher and gurney;

16 (8) an area for cleaning and sterilizing instruments; and

17 (9) an area for securely storing medical records, equipment, and
18 supplies.

19 b. A licensed abortion facility shall display its current license in
20 an area that is conspicuous to patients.

21

22 6. The commissioner shall adopt rules and regulations
23 concerning medications, supplies, and equipment that shall be
24 immediately available at a licensed abortion facility in case of an
25 emergency. The rules and regulations shall, at a minimum:

26 a. prescribe required equipment and supplies, including
27 medications, that are necessary for performance of an abortion in an
28 appropriate manner and that health care professionals at the licensed
29 abortion facility anticipate may be necessary, and for monitoring
30 the progress of each patient throughout the abortion and the
31 recovery period;

32 b. require that a sufficient amount of supplies and adequate
33 furnishing of equipment are available at all times to ensure
34 sufficient quantities of clean and sterilized equipment and supplies
35 to meet each patient's needs;

36 c. prescribe required equipment, supplies, and medications that
37 shall be available and ready for immediate use in case of an
38 emergency, and requirements for written protocols and procedures
39 to be followed in an emergency situation, such as a power outage;

40 d. prescribe mandated equipment and supplies for required
41 laboratory tests and the requirements for protocols to calibrate and
42 maintain laboratory equipment at the licensed abortion facility;

43 e. require a licensed abortion facility to be equipped with
44 ultrasound equipment; and

45 f. require equipment to be in an operating condition that is safe
46 for the patient and a health care professional at the licensed abortion
47 facility, meet applicable federal standards, and be checked annually
48 to ensure safety and appropriate calibration.

- 1 7. The commissioner shall adopt rules and regulations
2 concerning health care professionals at a licensed abortion facility
3 that, at a minimum, shall require:
- 4 a. the licensed abortion facility to have a medical director who is
5 a physician;
 - 6 b. a physician who performs an abortion in the licensed abortion
7 facility to demonstrate to the medical director competence in the
8 procedures involved in performing an abortion, in a manner that is
9 acceptable to the medical director;
 - 10 c. the employment of at least one physician with admitting
11 privileges at a hospital in the State that is within 30 miles of the
12 licensed abortion facility;
 - 13 d. a health care professional providing services under the
14 supervision of a physician to receive training, as appropriate, in
15 counseling patients, patient advocacy, and the specific
16 responsibilities assigned to the health care professional by the
17 physician; and
 - 18 e. a volunteer to receive training in the specific services
19 provided, including counseling patients and patient advocacy, as
20 appropriate.
- 21
- 22 8. The commissioner shall adopt rules and regulations
23 concerning medical screening and evaluation of a patient of a
24 licensed abortion facility that, at a minimum, shall require:
- 25 a. a patient's medical history to include: reported allergies to
26 medications, antiseptic solutions, or latex; obstetric and
27 gynecologic history; past surgeries; and medications the patient is
28 currently taking;
 - 29 b. a physical examination of a patient, including a bimanual
30 examination estimating uterine size and palpation of the adnexa;
 - 31 c. pre-procedure testing, including, but not limited to, urine or
32 blood tests for pregnancy if ordered by a physician, a test for
33 anemia, Rh typing pursuant to P.L.1987, c.166 (C.26:2-143 et seq.),
34 and other testing as may be indicated from a physical examination
35 of the patient;
 - 36 d. ultrasound evaluation of a patient who elects to have an
37 abortion, which shall be performed by a duly authorized technician;
 - 38 e. upon request of the patient, a review by a physician or other
39 health care professional of the results of the ultrasound evaluation
40 prior to performance of the abortion, and which shall include
41 permitting the patient to view the active ultrasound image and learn
42 the probable gestational age of the fetus;
 - 43 f. the physician to be responsible for: estimating the gestational
44 age of the fetus based on the ultrasound evaluation and obstetric
45 standards, in keeping with established standards of care regarding
46 the estimate of gestational age; and writing in the patient's medical
47 history the estimate of the gestational age of the fetus; and

1 g. the physician to keep the original prints of each ultrasound
2 evaluation in the patient's medical history.

3

4 9. The commissioner shall adopt rules and regulations
5 concerning an abortion at a licensed abortion facility which, at a
6 minimum, shall:

7 a. require a health care professional to be available throughout
8 an abortion;

9 b. provide for the safe conduct of an abortion, in conformance
10 with obstetric standards of care and in keeping with established
11 standards of care regarding the estimation of gestational age, as
12 prescribed by rules and regulations adopted pursuant to this act;

13 c. require appropriate use of local anesthesia, analgesia, and
14 sedation if ordered by a physician;

15 d. require that for a second or third trimester abortion,
16 appropriate precautions, including, but not limited to, intravenous
17 access, be made available to the patient; and

18 e. require appropriate monitoring of vital signs and other signs
19 and markers of the patient throughout the abortion and during the
20 recovery period, until the condition of the patient is deemed stable
21 in the recovery room.

22

23 10. The commissioner shall adopt rules and regulations
24 concerning a recovery room in a licensed abortion facility, which, at
25 a minimum, shall require:

26 a. immediate care following an abortion that shall consist of
27 observation in a supervised recovery room for as long as the
28 condition of a patient warrants;

29 b. the transfer of a patient to a hospital if a complication beyond
30 the management capability of a health care professional at the
31 licensed abortion facility is suspected or occurs;

32 c. monitoring of a patient by a health care professional who is
33 trained in management of patients in recovery and is capable of
34 providing basic cardiopulmonary resuscitation and related
35 emergency procedures;

36 d. that a physician, who has admitting privileges at a hospital
37 that is within 30 miles of the licensed abortion facility:

38 (1) remains on the premises of the licensed abortion facility until
39 each patient is stable and ready to leave the recovery room;

40 (2) in the case of an emergency, facilitates the transfer of the
41 patient and the child born alive to the hospital for emergency care if
42 hospitalization of the patient or child is necessary;

43 (3) signs the discharge order; and

44 (4) is readily accessible and available until the last patient is
45 discharged from the licensed abortion facility;

46 e. a physician to discuss Rho(D) immune globulin with each
47 patient for whom the medication is indicated, and to ensure that it is
48 offered to the patient in the immediate post-operative period or that

1 it will be available within 72 hours after completion of the abortion;
2 if the patient refuses the medication, the patient and a witness shall
3 sign a refusal form, which shall be prepared by the department and
4 kept in the patient's medical record;

5 f. require that written instructions concerning post-abortion
6 sexual relations, signs of possible complications, general aftercare,
7 and access to medical care for complications, including a telephone
8 number to call for a medical emergency, are provided to each
9 patient prior to discharge;

10 g. provide for a specified length of time that a patient is to
11 remain in the recovery room, based on the type of abortion
12 performed and duration of gestation;

13 h. require a physician to ensure that a health care professional
14 from the licensed abortion facility contacts the patient by telephone
15 within 24 hours of the abortion to assess the patient's recovery, if
16 the patient consents to the contact; and

17 i. require a recovery room to have equipment and services to
18 provide appropriate emergency resuscitative and life support
19 procedures pending the transfer of a patient or her child born alive
20 from the recovery room to the hospital.

21
22 11. The commissioner shall adopt rules and regulations
23 concerning follow-up care after an abortion that shall require a
24 licensed abortion facility to offer a patient a post-abortion medical
25 visit. If the patient requests the visit, it shall be scheduled for two
26 to three weeks after the abortion and shall include a medical
27 examination and review of the results of any laboratory test that
28 was taken in connection with the abortion. The follow-up visit shall
29 also include a urine or blood test for pregnancy to determine if there
30 is a continued pregnancy and, if a continued pregnancy is
31 suspected, a physician who performs abortions shall be consulted.

32
33 12. a. The commissioner shall adopt rules and regulations
34 concerning an incident resulting in serious injury at a licensed
35 abortion facility that shall require the facility to:

36 (1) record each incident that resulted in a serious injury to a
37 patient or her child born alive;

38 (2) report each incident that resulted in a serious injury in writing
39 to the department within 10 days after the incident;

40 (3) report any death of the abortion patient to the department no
41 later than the next working day; and

42 (4) report each incident resulting in a serious injury to the
43 appropriate regulatory professional board in the State.

44 b. As used in this section, "serious injury" means an injury that
45 occurs at a licensed abortion facility and creates a serious risk of
46 substantial impairment of a major body function or organ.

1 13. Nothing in this act shall be construed to limit the ability of a
2 physician or other health care professional to advise a patient on
3 any health issue.

4
5 14. a. The rules and regulations adopted by the Commissioner
6 of Health pursuant to this act shall be in addition to any rules and
7 regulations applicable to licensed ambulatory care facilities that are
8 not obviated by the provisions of this act.

9 b. The commissioner shall ensure that no personally identifiable
10 patient or physician information is released as a result of this act.

11
12 15. The Commissioner of Health shall adopt rules and
13 regulations necessary to effectuate the provisions of this act
14 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
15 (C.52:14B-1 et seq.).

16
17 16. This bill shall take effect on the first day of the 13th month
18 next following the date of enactment, but the Commissioner of
19 Health may take such anticipatory administrative action in advance
20 thereof as shall be necessary for the implementation of this act.

21

22

23

STATEMENT

24

25 This bill, designated as the "Women's Health Protection Act,"
26 provides for a new licensing category of "licensed abortion
27 facility." The bill provides specific regulations to be adopted by the
28 Department of Health (DOH) which a licensed abortion facility
29 would need to comply with in order to obtain or renew a license.
30 The regulations to be adopted concern: the physical plant of the
31 facility; the medications, supplies, and equipment (including
32 ultrasound equipment) that are to be available at a licensed abortion
33 facility; the health care professionals who staff a facility; medical
34 screenings and evaluations of patients; the abortion procedure itself;
35 recovery rooms of the facility; follow-up care for patients; and
36 incident reporting to DOH.

37 The bill provides that, beginning six months after the effective
38 date, DOH is to issue a license as a licensed abortion facility to an
39 "abortion practice" or "licensed ambulatory care facility" (as those
40 terms are defined in the bill) that complies with the provisions of
41 the bill. DOH is to prescribe the licensing application forms and
42 may issue a provisional six-month license, if there is no detriment
43 to the health and safety of the public or a State or local agency has
44 not otherwise disapproved the applicant.

45 A license is to be non-transferable, apply only to the location
46 stated on the license application, and be valid for one year.
47 Currently, licenses are renewed every two years. DOH may deny,
48 suspend, revoke, or refuse to renew a license in any case in which

1 DOH finds that there has been a substantial failure of the applicant
2 or licensed abortion facility to comply with the requirements of the
3 bill or the rules and regulations adopted to implement the bill.

4 Prior to issuance or renewal of a license DOH is to conduct an
5 on-site inspection to ensure compliance with the bill's provisions.
6 DOH regulations are to include provisions for conducting pre-
7 licensure and re-licensure inspections, which are to provide
8 procedures for conducting inspections and investigations as a result
9 of a complaint for non-compliance, and for recording, responding
10 to, and disposing of, complaints.

11 The bill also provides criminal and civil penalties, as well as
12 injunctive relief. A person who operates an abortion facility in
13 violation of the licensing requirements of the bill would be guilty of
14 a crime of the third degree (punishable by three to five years
15 imprisonment or fined up to \$15,000, or both), and a person who
16 purposely, knowingly, or recklessly violates the provisions of the
17 bill or the rules and regulations adopted by DOH also would be
18 guilty of a crime of the third degree.

19 A licensed abortion facility that violates the regulatory
20 provisions of the bill may be subject to a civil penalty of \$500 for
21 the first offense, \$1,000 for the second offense, and \$2,000 for the
22 third and each subsequent offense. Each day of violation
23 constitutes a separate violation.

24 The bill provides that the Attorney General may, in a civil
25 action, obtain prospective injunctive relief to enjoin a violation of
26 the bill.

27 The bill is intended to help ensure that the unsafe practices and
28 squalid conditions present at the abortion facility in Philadelphia
29 run by Dr. Kermit Gosnell, who was sentenced in May 2013 to life
30 in prison without parole for the murder of three babies born alive,
31 and the involuntary manslaughter of a patient who died after being
32 given too much anesthetic, do not occur in this State.